



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
AUSTIN'AND LOVELLA A. WIKOFF)

Appearances:

For Appellants: A. J. Porth

For Respondent: John R. Akin and
Jon Jensen
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue **and Taxation** Code from the action of the Franchise Tax Board on the protest of Austin and Lovella A. Wikoff against a proposed assessment of additional personal income tax and penalties in the total amount of \$470.25 for the year 1971, and from the action of the Franchise Tax Board on the protest of Austin Wikoff against proposed assessments of personal income tax and penalties in the total amounts of **\$3,138.14** and **\$3,756.91** for the years 1976 and 1977, respectively.

Appeal of Austin and Lovella A. Wikoff

The sole issue to be decided is whether appellants have established any error in respondent's proposed assessments of personal income tax and penalties for the years in issue.

Appellants did not file their 1971 return until 1975. On that return they discounted their taxable income by reflecting their opinion of the "fair market value" of Federal Reserve notes. Respondent issued a timely notice of proposed assessment on April 13, 1979, using the face value of Federal Reserve notes. The proposed assessments included penalties for failure to file a timely return (Rev. & Tax. Code, § 18681), and for failure to furnish information upon notice and demand (Rev. & Tax. Code, § 18683).

Respondent also received information indicating that Mr. Wikoff was required to file California personal income tax returns for 1976 and 1977. Respondent informed Mr. Wikoff that it had received no returns from him and demanded that he file returns for 1976 and 1977. When no returns were forthcoming, respondent estimated Mr. Wikoff's income from information contained on his 1975 federal return adjusted for inflation, and issued notices of proposed assessment for both years. Included in the proposed assessments were penalties for failure to file a return (Rev. & Tax. Code, § 18681), for failure to file a return after notice and demand (Rev. & Tax. Code, § 18683), and for negligence (Rev. & Tax. Code, § 18684).

Appellants protested the proposed assessments for all three years. In due course the proposed assessments were affirmed, and this appeal followed.

It is well settled that respondent's determinations of tax and the penalties involved in this appeal are presumptively correct, and the burden is on the taxpayer to prove them erroneous. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.) Furthermore, where the taxpayer files no return or otherwise refuses to cooperate in the ascertainment of his income, respondent has great latitude in determining the amount of tax liability, and may use reasonable estimates to establish the taxpayer's income. (See, e.g., Joseph F. Giddio, 54 T.C. 1530 (1970); Norman Thomas, ¶ 80,359 P-H Memo. T.C. (1980); Floyd Douglas, ¶ 80,066 P-H Memo. T.C. (1980).)

Appeal of Austin and Lovella A. Wikoff

In support of their position, appellants have advanced the familiar contention that Federal Reserve notes do not reflect taxable income at their face value, and that respondent's action violates various provisions of the federal constitution. Without exception, these contentions have been rejected as frivolous in previous decisions of the federal judiciary and this board.

(See, e.g., United States v. Whitesel, 543 F.2d 1176 (6th Cir. 1976); United States v. Daly, 481 F.2d 28 (8th Cir.), cert. den., 414 U.S. 1664 [38 L.Ed.2d 469] (1973); United States v. Porth, 426 F.2d 519 (10th Cir. 1970); Appeal of Arthur J. Porth, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Armen B. Condo, Cal. St. Bd. of Equal., July 26, 1977.) We see no reason to depart from these decisions in this appeal.

Appeal of Austin and Lovella A. Wikoff

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Austin and Lovella A. Wikoff against a proposed assessment of additional personal income tax and penalties in the total amount of \$470.25 for the year 1971, and that the action of the Franchise Tax Board on the protest of Austin Wikoff against proposed assessments of personal income tax and penalties in the total amounts of \$3,138.14 and \$3,756.91 for the years 1976 and 1977, respectively, be and the same are hereby sustained.

Done at Sacramento, California, this 5th day of January , 1982 , by the State Board of Equalization, with Board Members Mr. Reilly, Mr. Dronenburg, and Mr. Nevins present.

_____	, Chairman
George R. Reilly	, Member
Ernest J. Dronenburg, Jr.	, Member
Richard Nevins	, Member
_____	, Member